

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 12, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

Issuance of a sublease to Hoomaikai LLC., a Hawaii Limited Liability Company for a gift shop and related retail and office uses at the No. 1 Capitol District (formerly the Hemmeter Building), Honolulu, Oahu, Tax Map Key: (1) 2-1-17-001.

APPLICANT:

Hoomaikai LLC, 250 South Hotel Street, Honolulu, Hawaii 96813, as sublessee or tenant.

CONTROLLING AGENCY AND LEGAL REFERENCE:

DAGS is the lessee under a Chapter 37D, Hawaii Revised Statutes (HRS) financing agreement, which was used to purchase the building around December 2000. Funds for the purchase were raised through the issuance of certificates of participation (COPs). When all lease payments are made over the 20 year term, title to the property will be transferred to the Board of Land and Natural Resources (BLNR). The BLNR will then be asked to recommend to the Governor, the set aside of the property to DAGS.

Under Chapter 26-6, HRS, DAGS has the authority to operate and manage public buildings. The Friends of the Hawaii State Art Museum (Friends of HISAM) was established as a nonprofit group pursuant to Chapter 9-23, HRS, to work effectively with DAGS, the State Foundation on Culture and the Arts (Foundation) to enhance and support the work of the Hawaii State art museum, its ancillary programs, and amenities. The statute allows the Friends of HISAM to operate concessions or other for-profit business enterprises within or on the grounds of the state art museum as directed by the Foundation, or to enter into contracts as approved by and with the Foundation, for the operation of such enterprises. Funds generated by the Friends of HISAM shall be used as supplemental funds that may be expended for the following purposes:

1. Employing personnel as required to operate and maintain the museum and ancillary programs for education, cultural, and promotional purposes;
2. Planning and development of state art museum programs;
3. Construction, repairs, replacements, additions, and extensions of state art museum facilities;
4. Operational and maintenance costs of state art museum and

ITEM M-4

- ancillary programs and amenities;
5. Administrative costs of the state art museum; and
 6. Doing other things necessary to accomplish the purposes of this chapter, including the adoption, amending, or repeal of rules pursuant to chapter 91.

ZONING:

State Land Use District: Urban and located in the Capitol
Special Design District
City & County of Honolulu
CZO: BMX-4 (Central Business mixed use)

TRUST LAND STATUS:

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO X

CURRENT USE STATUS:

Various state agencies currently occupy the building's leasable space, including the State Foundation on Culture and the Arts (SFCA), which is administratively attached to DAGS. The Hawaii State Art Museum (HISAM) occupies a major portion of the second floor and is run and operated by SFCA. The café (Downtown at the HISAM) operates on the ground floor and is located adjacent to the gift shop. The sublease for the café was previously approved by the Board of Land and Natural Resources at its meeting held on February 9, 2007. Hoomaikai LLC has been in operation in the gift shop space under a Memorandum of Understanding (MOU) with the Friends of HISAM since November 2007. The purpose is to provide sales information and consulting services for the Friends with regard to future operations of the gift shop. Under the MOU, Hoomaikai pays the Friends ten percent (10%) of gross sales.

LOCATION AND AREA:

Premises located on a portion of the ground floor of the No. 1 Capitol District, comprising approximately 810 square feet, together with a 42 square foot path to the entry, and a 160 square foot storage room, at 250 South Hotel Street, Honolulu, Hawaii 96813, (See Exhibit A)

TERM:

Twelve (12) months, commencing with the approval of this sublease by the Board of Land and Natural Resources. Sublessee has an option to extend the term of the lease for two (2) additional twelve (12) month periods.

RENT AMOUNT:

The proposed monthly rent is: Ten percent (10%) of sublessee's gross receipts for all retail sales based upon point of sale records on the Premises.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The controlling agency shall be responsible for ensuring compliance with Chapter 343, HRS.

DCCA VERIFICATION:

Place of business registration confirmed: Yes ☒ No_
Registered business name confirmed: Yes ☒ No_
Applicant in good standing confirmed: Yes ☒ No_

REMARKS:

Both the Department of Accounting and General Services (DAGS) and the Friends of the Hawaii State Art Museum (Friends of HISAM) will be designated as sublessors or landlords.

The sublease with Hoomaikai LLC, will be subject to the terms and conditions of the Lease Purchase Agreement, which is the financing lease that the State entered into to acquire the property. If there are any conflicts between this sublease and the Lease Purchase Agreement, the terms of the Lease Purchase Agreement shall prevail.

Under the lease financing arrangement using certificates of participation (COP), investors receive exemptions from federal income tax. This exemption can be jeopardized should the State permit an excessive amount of non-government use in the building. DAGS has reviewed this proposed leasing arrangement with the Department of Budget & Finance's General Advice Counsel for compliance and to maintain tax benefits for the investors.

An agreement was developed to identify specific costs and responsibilities between DAGS and the Friends of HISAM, as Landlord.

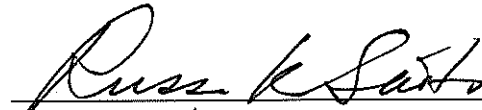
RECOMMENDATION:

That the Board consent to the sublease by DAGS and the Friends of HISAM, as sublessor, and Homaikai, as sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following:

1. Review and approval by the Department of the Attorney General as to form for the new sublease;

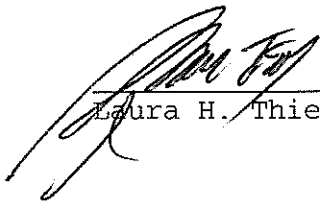
2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Russ K. Saito,
State Comptroller

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

Richards Street

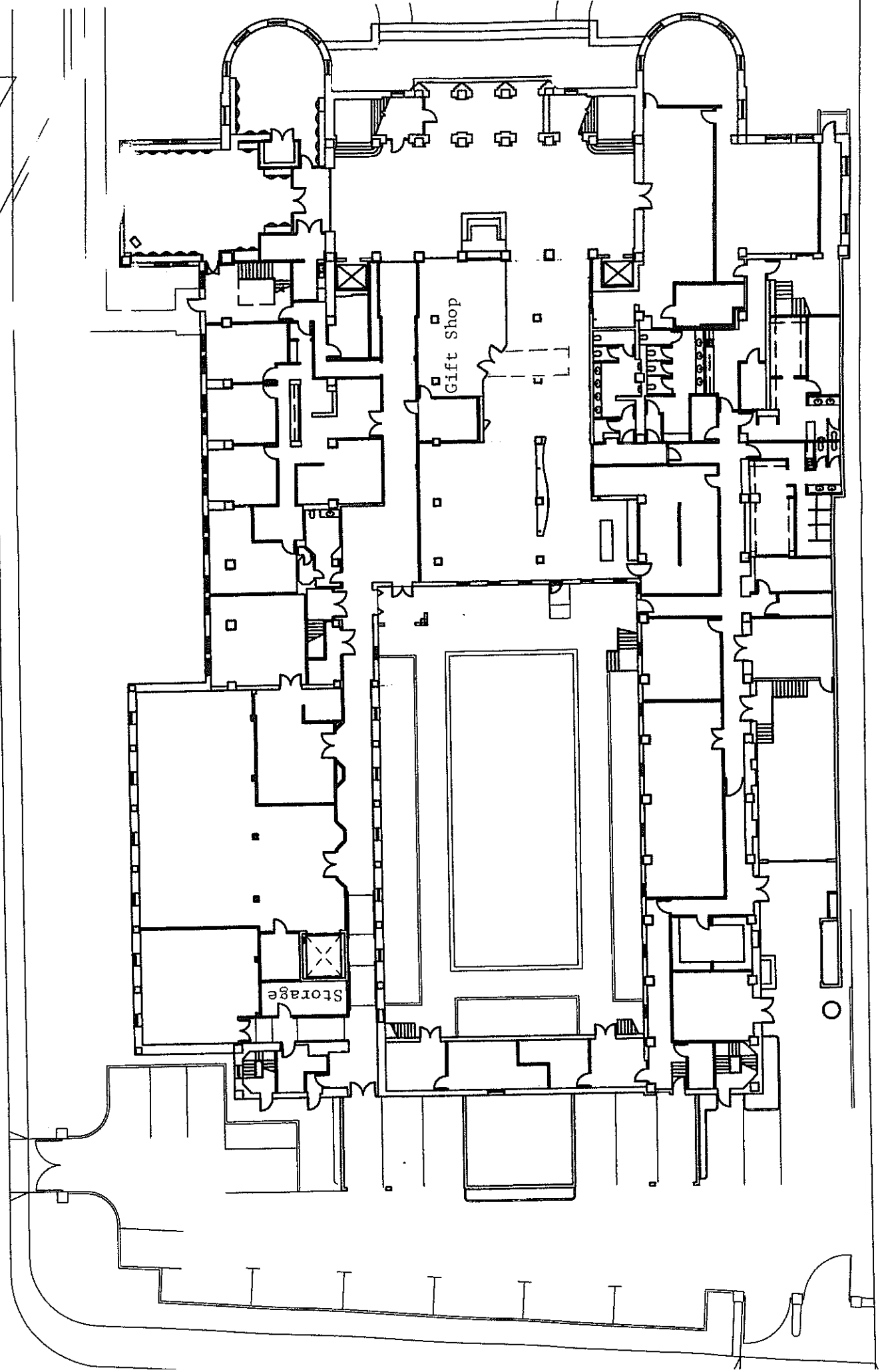


EXHIBIT A